

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SCOTT MICHALAK,

Plaintiff,

ANSWER & JURY DEMAND

vs.

COHEN & SLAMOWITZ, LLP,

CASE NO. 10-cv-624

Defendant.

Defendant, COHEN AND SLAMOWITZ, LLP, by and through its attorneys, Smith, Sovik, Kendrick & Sugnet, P.C., in answer to plaintiff's Complaint, state the following:

1. Paragraph "1" of plaintiff's Complaint contains plaintiff's characterizations of his claims. No response is required. To the extent a response is required, defendant **DENIES** the allegations contained in paragraph "1" of plaintiff's Complaint.

2. Paragraphs "2" and "3" of plaintiff's Complaint contain conclusions of law. No response is required. To the extent a response is required, defendant **DENIES** the allegations contained in paragraphs "2" and "3" of plaintiff's Complaint.

3. **DENIES KNOWLEDGE AND INFORMATION** sufficient to form a belief as to the allegations contained in paragraph "4" of plaintiff's Complaint.

4. **ADMITS** the allegations contained in paragraphs "5" and "6" of plaintiff's Complaint.

5. Paragraph "7" of plaintiff's Complaint contains conclusions of law. No response is required. To the extent a response is required, defendant states that, to the extent plaintiff claims defendant's employees acted in a manner which violated the FDCPA or other relevant statutes or regulations, such actions, if any, were beyond the scope of such employment with

defendant. Defendant otherwise **DENIES KNOWLEDGE AND INFORMATION** regarding plaintiff's claims in paragraph "7" of plaintiff's Complaint.

6. Paragraph "8" of plaintiff's Complaint contains plaintiff's characterizations of his Complaint. No response is required.

7. **DENIES KNOWLEDGE AND INFORMATION** sufficient to form a belief as to the allegations contained in paragraphs "9", "10", "11", "12", "13" and "14" of plaintiff's Complaint.

8. **DENIES** the allegations contained in paragraphs "15" and "16" of plaintiff's Complaint.

9. Defendant repeats and realleges each and every admission, denial or denial of knowledge or information sufficient to form a belief as to those allegations repeated and realleged in paragraph "17" of plaintiffs' Complaint.

10. **DENIES** the allegations contained in paragraphs "18" and "19" of plaintiff's Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

11. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

12. Plaintiff has failed to mitigate his damages.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

13. Upon information and belief, plaintiff's cause of action may not be maintained because the statute of limitations for one or more of plaintiff's claims has expired.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

14. Defendant did not violate, in which or in part, any provision of the FD CPA.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

15. To the extent that a violation of 15 U.S.C. §1692 may later be determined to have occurred, such violation was not intentional and resulted from a bona fide error notwithstanding reasonable procedures adopted to avoid any such error.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

16. Plaintiff is precluded by the doctrine of waiver and estoppel.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

17. Any damages claimed are barred and/or circumscribed by 15 U.S.C. §1692(k).

JURY DEMAND

18. Demand is made for a jury trial on all issues.

WHEREFORE, defendant demands judgment dismissing plaintiff's Complaint, together with the costs and disbursements of this action.

DATED: November 3, 2010.

SMITH, SOVIK, KENDRICK & SUGNET, P.C.

By: 

Daniel R. Ryan, Esq. (#513902)

Attorneys for Defendant

250 South Clinton Street, Suite 600

Syracuse, New York 13202

Telephone: (315) 474-2911

TO: Kenneth R. Hiller, Esq.
Law Offices of Kenneth Hiller, PLLC
6000 North Bailey Ave., Ste. 1A
Amherst, New York 14226
khiller@kennethhiller.com